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NOTES AND COMMENTS:

ON SULU'S CLAIM TO BRITISH NORTH BORNEO

I. SOME FACTS ABOUT SULU

Geographically speaking, Sulu consists of some three hundred islands and islets and innumerable coral reefs stretching from the island of Basilan to Borneo, separating the Sulu Sea from the Celebes Sea, and tending to prove the theory that the Philippines be-

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AUTHOR'S NOTE: I gratefully acknowledge my indebtedness to Ex-Commissioner Teopisto Guingona for generously allowing me to use his materials on the subject which make up the bulk of this paper. Treaties, documents, and other evidentiary papers from the files of his library and which were drawn up in connection with the negotiations concerning the lease of North Borneo by the Sultan of Sulu have been touched and included in this work. Ex-Commissioner Guingona had been attorney-in-fact for the Sultan of Sulu with innumerable powers, among others to execute contracts, draw up treaties, and collect rentals.

Some space has been devoted in this paper to the history of the Sultanate of Sulu and the advent of Islam. This has been done because, in my belief, it is quite impossible to acquire a clear understanding of the matter without knowing how the sultanate came to exist in Sulu, the rulers of which would later enter into agreements

long to the same geographic region as Borneo, Sumatra and Java.[1] Basilan, with the smaller islands of its group, is excluded, as it is administratively a part of the province of Zamboanga on the island of Mindanao. With the annexation of the Turtle and Mangsee Islands,[2] Sulu's boundaries have been extended farther southward.

Prior to the coming of the Americans, the Sulu Sultan was an absolute monarch, except in so far as his government had come under Spanish control. His powers extended to parts of Mindanao, Palawan and to Brunei in Borneo where he was given military honors whenever he went there.[3] The northern end of Borneo, and a considerable part of its northeastern, have always been in the possession of the Sulu princes.[4]

And while the population appears to be a mixture of the aborigines of that region, Malays and Bugis, the ruling class has always consisted of people from Sulu.[5] Very little was known about this part of the Sultan's territory inasmuch as it was rarely visited by outsiders at anytime.[6]

Thus, when a local weekly made mention of the intention of Sulu's new sultan to reclaim British North Borneo [7] many lifted a quizzical eyebrow, some in surprise and some in disbelief.

Are there any grounds for the Sulu Sultan's claims to British North Borneo?

II. THE ADVENT OF ISLAM AND THE ESTABLISHMENT OF THE SULU SULTANATE

The question under consideration brings us back to the early history of Sulu when the Sultanate was still potent and an entity to reckon with.

The establishment of the Sultanate in Sulu came close at the heels of the introduction of Islam. As early as 1380 A.D. a noted Arab judge and scholar, Macdum, had already reached Sulu from

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with a foreign entity leading to the issue under consideration. The issue is largely the product of history and religion and cannot therefore be dissociated from them.

[1] Galang, Zoilo, *Encyclopedia of the Philippines*. Philippine Education Co., Manila, 1936. Vol. VIII, p. 438.

[2] The Turtle Islands had been under British administration since the nineteenth century. In a treaty entered into between the United States and the United Kingdom in 1930 the former agreed to the continued British administration of the islands but reserved the right to the transfer of the territory upon serving one year's notice. When the Philippines became independent, Vice-Pres. Quirino, then Sec. of Foreign Affairs served the necessary notice and after survey of the islands made representations for its transfer to the Republic of the Philippines. This was done on October 16, 1947. See *This Week:* The Manila Chronicle Magazine, July 11, 1948, pp. 14-15; 35.

[3] Orosa, Sixto, *The Sulu Archipelago and Its People*, World Book Co., New York, 1931, p. 35.

[4] Crawford, John, *Descriptive Dictionary of the Indian Islands and Adjacent Countries*, Bradbury & Evans, London, 1856, p. 62.

[5] *Loc. cit.*

[6] *Loc. cit.*

[7] The Sunday Times Magazine, January 20, 1951, p. 16.

Johore.[8] He was the first to bring the islamic faith to the islands. In 1390 he was followed by Rajah Baguinda,[9] who successfully continued his work and who proclaimed himself ruler of the islands.[10]

The greatest work of conversion, however, was done by Abu Bakr, another Arab judge and scholar who reached Sulu in 1450.[11] The hospitality with which he was received at Bwansa [12] presaged the success of his mission. He was to win the favor and good graces of Rajah Baguinda, whose daughter, Paramisuli, he married later. Abu Bakr established mosques. So assiduous was he as a Mohammedan missionary that the people and chiefs of the islands actually abandoned their former gods, embraced the new faith, and observed and followed its commandments. This process of reformation and conversion was slow and gradual but it was real and sure.

There is no evidence to show that Abu Bakr had any military forces by means of which he could assume military authority and rule after Rajah Baguinda's death. But it is perfectly credible that Rajah Baguinda, realizing the potentialities of leadership in Abu Bakr, and being without a male heir, appointed him, his son-in-law and chief judge and priest, as his heir, and delegated to him all the authority he exercised over Bwansa and the islands of Sulu. It appears that the native chiefs had no objection to the idea and they accepted Abu Bakr as their temporal lord as well as their spiritual leader.[13]

Upon the death of his father-in-law, Abu Bakr became the head of a modified form of the Arabian Caliphate. He divided the island of Jolo into five districts, namely: Parang, Pansul, Lati, Gitung, and Luuk,[14] appointing a Panglima [15] as the head of each district. He introduced an eclectic code based on Koramic precepts and which served as a foundation for the work of his successors.

Abu Bakr was succeeded by his children and later by his grand children, and so the sultanate was regularly organized.

III. THE SULTANS OF SULU

After Abu Bakr, his son Kamalud Din succeeded to the throne of the sultanate. The sultans who ruled later in the order of their succession were: [16] Maharajah Upu, Pangiran Buddiman, Tanga, Bungsu, Nasirud-Din II, Salahud Din Karamat, Shahabud Din, Mustafa Shafuid Din, Badaruddin I, Nasaruddin III, Alimud Din I, Israel, Alimud Din II, Sharapud Din (1789), Alimud Din III, Aliyud

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[8] Kalaw, Maximo M., *An Introduction to Philippine Social Science,* 2nd edition, Philippine Education Co., Manila, 1938, p. 455.

[9] Galang, *op. cit.,* p. 455; Kalaw, *ibid.,* p. 163.

[10] Galang, *Loc. cit.*

[11] *Loc. cit.*

[12] Former capital of Sulu.

[13] Saleeby, Najeeb, The History of Sulu, Manila, 1908, p. 162.

[14] *Loc. cit.*

[15] A title next to a datu in rank.

[16] Orosa, *op. cit.,* 25-26.

Din I, Shakiral Lah (1808) Jamalul Kiram I, Mohammad Pulalum, Jamalul Alam, Badarud Din III and Jamalul Kiram.

When Alimud Din III (known in Sulu as Amirul Muhminin) came to Manila in January, 1747, his elder brother, Bentilan usurped the throne of Sulu. But upon the return of the former to Jolo in 1762, Bantilan gave it up without further ado.

Immediately after the death of Bantilan, Alimud Din III, reorganized the Government of Sulu into three administrative districts.[17] The Jolo groups and Palawan comprised the first district; Tawi-Tawi, Siasi and Sibutu, the second; Silam, Lahat Datu, Sandakan, Sampurnah, Timodal and the Tatagan groups (which consists of fourteen islands), the third.

After the reorganization Alimud Din appointed his nephews [18] to administer the three administrative districts in this order: Datu Israel—first district; Datu Appowah—second district; Datu Amping Basi—third district.[19]

After the death of Alimud Din, Israel was crowned Sultan of Sulu. He continued the work of his predecessor, making no changes in the state of affairs and administration left by his uncle except in the third district in which Datu Amping Basi, his elder brother, was made sole ruler.[20]

Datu Amping Basi settled down on the island of Tatagan which became the site of the central government of the reorganized third district of Alimud Din. He died in Lahat Datu and his son Datu Dandai continued to rule over the third district. Dandai made some improvements on the island of Tatagan. He built a cota and a home befitting his rank. After his death, his son Sakilan became the ruler.[21]

Datu Sakilan had a daughter, Dayang Lana, who afterwards became Pangian[22] of Sulu on her marriage to Sultan Jamalul Alam. The marriage changed the status of the third district. Jamlaul Alam gave this part of his royal domain as his dowry to Lana. By virtue of this act, Lana automatically became absolute owner of the third district with the power of life and death over its inhabitants.[23]

Out of this wedlock was born Badaruddin, who was named Raja Muda [24] of Sulu under his father's reign.

Badaruddin was crowned Sultan of Sulu after the death of his father, Jamalul Alam. Besides being a Sultan of Sulu, Badaruddin assumed personal ownership of the island which he inherited from his mother, Pangian Lana. Upon his death Jamalul Kiram, his bro-

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[17] Guingona, Teopisto, *A Geneological List of Our Family from Sultan Dimuddin to Sultan Mohammad Jamalul Kiram*, p. 1.

[18] Sons of the deceased Bantilan.

[19] *Loc. cit.*

[20] *Ibid.*, p. 2.

[21] *Loc. cit.*

[22] Note—Pangian is a native name for Queen.

[23] Guingona, *Loc. cit.*

[24] Crown Prince.

ther, ascended the throne. Jamalul Kiram had always recognized the ownership of his niece and foster-daughter, Dayang Dayang Hadji Piandao, of the 14 islands.[25]

The conflict between the United States and Spain took place during the reign of Jamalul Kiram. American victory was indicated by the ensuing treaty of Paris (December 10, 1898) in which the boundary of the Philippine Islands was finally drawn.

The Sultan Jamalul Kiram died heirless on June 7, 1936. His niece and foster-daughter, Dayang Dayang Hadji Piandao, became acting sultana during the 40-day interregnum prescribed by Mohammedan custom, after which Jamalul's brother, Muwallil Wassit, was chosen. Shortly before coronation, he died suddenly of heart attack, after proclaiming his son, Ismael, as successor.

On January 20, 1937 Jainal Abirin II[26] was crowned Sultan with Princess Tarhata as Crown Princess. Three months later, Datu Ombra was made second regnant sultan.

The Sultan of Sulu today has a greatly emasculated status as a ruler; his predecessors have formally renounced their right of sovereignty over the islands. His territory has also dwindled.

IV. COMING OF THE SPANIARDS

At the height of its power, Sulu became an obstacle to Spain's march of colonization in the islands. Several attempts were made to gain a foothold in Mindanao and in the Sulu archipelago, but these were hardly successful in their primary object of complete subjugation. One expedition after another was sent. Finding that military expeditions could not successfully cope with the stubborn resistance of the Moro warriors, plans were laid by the Spanish central government at Manila to deal with them more effectively.

In 1851 a treaty was signed between the Sultan of Sulu and the Government of Spain. Under the provisions of this treaty Sulu was reduced to a mere protectorate of Spain. The Sultan exercised only powers of internal administration subject to the treaty stipulations. However, Sulu customs, laws, and religion were respected. They were not made subject to Spanish jurisdiction.

V. THE CESSION OF TERRITORIAL POSSESSIONS IN BORNEO

On January 22, 1878, a grant was signed by the late Sultan, Mohammad Jamalul Alam, in his palace at Lipuk, Sulu, ceding the Sulu possessions in Borneo to the British North Borneo Company. He granted the authorized representative of this company, Baron Von Overbeck, absolute ownership and dominion over those possessions in perpetuity, for a monetary consideration of $5,000 per annum.[27]

An American Company started by Mr. Torrey on the Kiwanis River had preceded the British North Borneo Company, and was

[25] Guingona, *op. cit.*, p. 3.

[26] The former Datu Tambuyong, Moro leader in the decisive battle of Bud Bagsalo.

[27] Treaty of Sandakan, British North Borneo, January 22, 1878.

established in 186[illegible]. The concessions of the American Company were obtained from the Sultan of Brunei, but this enterprise proved to be a financial flop and its rights were bought by the Austrian Baron Von Overbeck and the English merchant Mr. Alfred Dent.[28]

Spain had opposed the Sultan's action, saying that Sulu, being a Spanish vassal, could not dispose of her territory without the former's consent. In spite of this opposition, the English company, organized by Mr. Dent, succeeded in obtaining a charter of incorporation under the Act of Parliament of November 1, 1881, as the British North Borneo Company with rights to acquire other interests in, over, or affecting the territories or property comprised in the grant.[29]

Baron Von Overbeck and Mr. Dent obtained from the Sultans of Brunei and Sulu a series of charters conferring on them sovereign authority in North Borneo under the title of Maharajah of Saboh, Rajah of Gaya, Rajah of Sandakan and Datu Bandahara.[30]

VI. TEXT OF THE COMMISSION GRANTED

The form and text of the commission granted by Sultan Jamalul Alam appointing Baron Von Overbeck, Datu Bandahara and Rajah of Sandakan, reproduced in the annual report of General George Dawis, commanding the Department of Mindanao, under date of August 1, 1902, is quoted hereunder:[31]

> "To all nations on the face of the earth whom these matters may concern: We, Mabassari Padukka Mawlana as Sultan Mohamad Jamalul Alam bin Al Marhum Mahassari as Sultan Mohamad Pulalum, Sultan of Sulu and its dependencies, send greeting:
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> "Whereas, we have seen fit to grant unto our trusty and well-beloved friends, Gustavus Baron Von Overbeck and Alfred Dent, Esquire, certain portions of the dominions owned by us, comprising all the lands on the north and east coast of the Island of Borneo, from the Pandasan River to the Northwest to the Sibuco River on the East Coast including among others, the states of Paitan, Sugut, Pangaya, Labuk, Sandakan, Kina Batangan, and Mumiang and all the lands and territories in Darvel Bay as far as Subuco River together with all the lands belong thereto, for certain considerations between us, agreed, and
>
> "Whereas the said Baron Von Overbeck is the chief and only authorized representative of his company in Borneo:
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> "Now, therefore, know ye that we Mahassari Padukka Mawlana as Sultan Mohamad Jamlul Alam bin Al Marhum Mahassari Padukka as Sultan Pulalum Sultan of Sulu and its dependencies have nominated and appointed and do hereby nominate and appoint the said Baron Von Overbeck supreme and inde-

[28] Saleeby, *op. cit.*, p. 225.
[29] *Ibid.*, p. 226.
[30] *Ibid.*, p. 225.
[31] *Ibid.*, pp. 225-226.

pendent ruler of the above named territories, with the title of Datu Bandahara and Raja of Sandakan, with absolute power over life and death of the inhabitants of the country with all the absolute rights of property over the soil of the country vested in us and the right to dispose the same as well as the rights over the productions of the country, whether mineral, vegetable, or animal, with the rights of making laws, coining money, creating an army and navy, levying customs dues on home and foreign trade, and shipping and other dues and taxes on the inhabitants as to him may seem good or expedient, together with all other powers and rights usually exercised by and belonging to sovereign rulers, and which we hereby delegate to him of our own free and sovereign will.

"And we call upon all foreign nations with whom we have formed friendly treaties or alliances and we command all the datus, nobles, governors, chiefs and people owing allegiance to us in the said territories to receive and acknowledge the said Datu Bandahara as the supreme ruler over the said states and to obey his commands and respect his authority thereon as our own. And in case of the death or retirement from office of the said Datu Bandahara then his duly appointed successor in the office of supreme ruler and governor-in-chief of the company's territories in Borneo shall likewise, if appointed thereto by the Company, succeed to the title of Datu Bandahar aand Raja of Sandakan, and all the powers enumearted above be vested in him.

"Done at the palace of the Sultan, at Likup, in the Island of Sulu, on the nineteenth of Muharam, A.H. 1295, being the 22nd day of January, A.D. 1878."

VII. THE DECLINE OF THE SULTANATE

The House of Sulu had come upon unprofitable days. The Sultan was treated as a monarch when he visited Singapore and that portion of Borneo which he leased to the British North Borneo Company. But in the Philippines his position was anomalous. He had become a "protected sovereign."

By the treaty of 1851 the Sultan of Sulu had acknowledged the sovereignty of the Spanish Government over Sulu. However, any question of his power to make a valid cession of the territories named in the main deed of cession was apparently set at rest by a protocol of 1885 signed on behalf of the British, Spanish and German governments at Madrid on March 7, 1885.

Article III of that Protocol reads: [32]

"The Spanish Government renounces, as far as regards the British Government, all claims of sovereignty over the territories of the continent of Borneo, which belong, or which have belonged in part to the Sultan of Sulu, and which comprise the

[32] Quoted in the judgment of the High Court of the State of North Borneo, of Civil Suit No. 169/39.

neighbouring islands of Balambangan, Banguey, and Malawali, as well as these comprised within a zone of three maritime leagues from the coast, and which form part of the territories administered by the company styled the British North Borneo Company."

The Spanish forces evacuated Sulu in May, 1899. On August 22, 1899,[33] General Bates of the United States Army, concluded a treaty[34] with Sultan Jamalul Kiram but which was abrogated by President Roosevelt on March 21, 1904 because the Sultan of Sulu had failed to keep order in Sulu according to his agreement.[35]

Governor Frank Carpenter undertook to straighten out the tangle. On March 11, 1915, he signed an agreement with the Sultan by which the latter, for himself and his heirs, renounced temporal sovereignty over the Sulu Island including the right to collect taxes, the right to decide lawsuits and the right to all the lands. In exchange, he was recognized by the Government as the head of the Islam Church in the Philippines, his pension of ₱12,000 was continued for life and he was given a grant of land in Jolo.[36]

Thus by 1915, the status of Sulu had entirely changed. By then the Sultan had been shorn of all temporal power and retained only the purely nominal title of Sultan and certain religious jurisdiction exerciseable only with the consent of the parties, a situation which was well described in a letter to the Sultan dated July 30, 1920, from the Director of the Bureau of Non-Christian Tribes to the Departmen of the Interior, Manila.

After the death of Sultan Jamalul Kiram in 1936, the Philippine Government decided not to recognize the continued existence of the Sultanate. Thus ended the Sultanate of Sulu.

VIII. SUIT AGAINST THE GOVERNMENT OF NORTH BORNEO AND THE COURT DECISION

a. *The Suit.*—Docketed as civil suit No. 169 in the high court of the State of North Borneo, was a suit filed by the late Dayang Dayang Hadji Piandao and eight others as legal heirs to the territory known as British North Borneo. The suit was to obtain a declaration that the plaintiffs were entitled to receive the cession monies under the deed of the cession made by Sultan Jamalul Alam on January 22, 1878 and under a confirmatory deed dated April 22, 1903. The question involved here was not whether to pay them or not; rather, the question was whether the right to receive the cession monies descended to the successors in sovereignty of the Sultan or to his private heirs or representatives.[37]

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[33] Carpenter, Frank, *Through the Philippines,* Doubleday, Page & Co. New York, 1925.

[34] "Treaty" is the term used by Carpenter.

[35] *Loc. cit.*

[36] *Ibid.*, p. 238.

[37] From the decision of the High Court of the State of Borneo in connection with the Civil Suit No. 169/39.

b. *Who are the Legal Heirs?*—When the Sultan of Sulu signed the Grant in 1878, he did it in the exercise of his sovereign rights over the territorial possession in North Borneo. Those rights were never altered or questioned; in fact, nothing about it was mentioned by the Philippine Government itself in its letter dated July 20, 1920, divesting the Sultan of Sulu of all his political powers and prerogatives.[38]

If by virtue of this same letter the Sultan of Sulu lost *ipso facto* his rights over the territories he ceded to the British North Borneo Company, it is surprising to note that the same company continued to comply faithfully with the terms and conditions of the Grant, without any alteration or protest. Not only this, the British North Borneo Company and its duly constituted representatives have unquestioningly and continuously respected all the rights, privileges, honors and prerogatives enjoyed by the Sultan of Sulu ever since the Grant was signed.[39]

As already noted, the Grant was duly executed and signed in Lipuk, Sulu, Philippine Islands. In accordance with the principles of International law, the laws of the Philippines govern and determine the validity of this Grant. It is interesting to note that in this connection, the Philippine (Spanish) Civil law on the subject at the time the Grant was signed would seem to make the grant of doubtful validity for the following reasons: [40]

1. Because the period of the lease is ad perpetuom;
2. Because the consideration stipulated is clearly inadequate;
3. Because its provisions appear to be one-sided and unjust inasmuch as it grants all rights, benefits and privileges to the grantees. It imposes on the Sultan obligations, but with inadequate and isufficient consideration.

In *United States of America v. McKee,* James, V. C. said,[41] "I apprehend it to be the clear public universal law that any government which *de facto* succeeds to any other government, whether by revolution or restoration, conquest or reconquest, succeeds to all the public property, to everything in the nature of public property, and to all rights in respect of the public property, and to all rights in respect of the public property of the displaced power, whatever may be the nature of origin of the title of such displaced power."

Applying this dictum, it is evident that the Government of the Philippines is the successor in sovereignty of the Sultan. But counsel for the plaintiffs contended that the decision of the Philippine courts in the administration proceedings relating to the Sultan's es-

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[38] Guingona, Teopisto, "Basic facts regarding the Sultan of Sulu's Territorial possessions in North Borneo now occupied by the British North Borneo Company."

[39] *Ibid.*, p. 3.

[40] *Loc. cit.*

[41] Quoted in the judgment of the High Court of the State of North Borneo, of Civil Suit No. 169/39, p. 3 (December 19, 1939).

tate precludes the Philippine Government from asserting any claim to the cession monies.

> "The Philippines Government allowed Sultain Jamalul Kiram to enjoy the cession monies as a private person since 1915; they have made no claim on his death and have by judgment of a Philippine court reorganized the right of the private heirs of the Sultan to receive the cession monies.[42]

The right of the private heirs to succeed is strengthened by a passage from a judgment of Lord Cairns in United States of America v. Wagner. (R. 2 Ch 582) as follows: [43]

> "It was contended, then, that when a monarch sues in our courts, he sues as the representative of the state of which he is the sovereign, that the property claimed is looked upon as the property of the people or state; and that he is permitted to sue, not for his own property, but as the head of the executive government of the state to which the property belongs; and it was contended, in like manner, that when the property belongs to a republic, the head of the executive, or in other words the President, ought to sue for it.
>
> "This argument, in my opinion, is founded on a fallacy. The sovereign, in a monarchial form of government, may, as between himself and his subjects, be a trustee for the latter, more or less limited in his power over the property which he seeks to recover. But in the courts of Her Majesty, as in diplomatic intercourse with the government of Her Majesty, it is the sovereign, and not the state, or the subjects of the sovereign, that is recognized. From him, and as representing him individually, and not his state or kingdom, is an ambassador received. In him individually, and not in a representative capacity, is the public property assumed by all other states, and by the courts of other states, to be vested."

The claim of the plaintiffs was based on the will of the late Sultan Jamalul Kiram, the relevant words of which are as follows: [44]

> "One half of my estate goes to Piandao Kiram and the other half to be decided equally between Tarhata Kiram and Sakimur Lin Kiram. Only my Sandakan estate will be divided into four, one part to give to Datu Raja Muda my younger brother."

But then Raja Muda died intestate on November 21, 1936. His children put up their claims for the cession monies. Dayang Dayang Hadji Piandao on April 2, 1937, obtained letters of administration with the will annexed, from the court of First Instance of Sulu, 9th Judicial District. On July 23, 1939, the beneficiaries came to an

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[42] *Loc. cit.*
[43] *Ibid.*, p. 4.
[44] *Loc. cit.*

agreement for the distribution of the estate, the agreement being the project of partition.[45]

> "The argument is that the deed of cession was a complete and irrevocable grant of the territories comprised therein and all that the grantors obtained was the right to a money payment, that is, only a contractual right, personal to the Sultan and to his private heirs. I do not say that I accept the argument of the plaintiffs in its entirety on this point but where there is no claim by the successors in the sovereignty then the claims of the private heirs are valid." [46]

c. *The Stand of the British North Borneo Government.*—In a letter dated April 14, 1937, the Resident of Sandakan wrote to the counsel for the plaintiffs as follows: [47]

> "In a letter dated the 28th 1936, His Britannic Majesty's Consul General at Manila informed his Excellency that the Philippine Government had decided not to recognize the continued existence of the Sultanate; and I am to say that His Excellency is therefore unable to take cognizance of Dayang Dayang Piandao or anyone else as Sultan of Sulu.
>
> "There will accordingly be no longer any "successor" to the Sultanate and the question of the person to whom the cession monies are to be paid depends on who is the rightful heir under the cession of January 22, 1878.
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> "Before, therefore, any of the cession money due in respect of the period subsequent to the demise of the Sultan can be paid, it will be necessary for any claimant to establish their claim in the High Court of this State and it will be for them to produce evidence of the custom of inheritance sufficient to satisfy the court that their claim is valid."

This letter set out the official view of the British North Borneo Government.

d. *The Court Decision.*—Thus, Judge Macaskie handed down his decision: [48]

> "...I am satisfied that the plaintiffs have proved that their claim is valid, and I give judgment accordingly that Dayang Dayang Hadji Piandao Kiram, Putli Tarhati Kiram, Putli Sakinur in Kiram, Mora Hapaa, Esmali Kiram, Datu Punjungan Kiram, Sitti Mariam Kiram, Sitti Rada Kiram, and Sitti Putli Jahara Kiram are entitled to the monies payable under the deeds of cession dated 22nd January, 1878, and 2nd April, 1903, in the following shares:

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[45] *Loc. cit.*
[46] *Ibid.*, p. 3.
[47] *Loc. cit.*
[48] *Loc. cit.*

"Dayang Dayang Hadji Piandao Kiram .	Three eights
Putli Tarhata Kiram	Three sixteenths
Putli Sakinur In Kiram	Three sixteenths
Mora Napaa	One Twenty-fourth
Esmail Kiram	"
Datu Punjungan Kiram	"
Sitti Mariam Kiram	"
Sitti Rada Kiram	"
Sitti Putli Jahara Kiram	" "

IX. CONCLUSION

As has been made evident the North Borneo Government does not dispute the right of the heirs of the Sultan of Sulu to receive the cession monies. What it wanted to find out was who the legal heirs of the Sultan were. Since the Philippine Government in its capacity as successor in sovereignty of the Sultan of Sulu has not put forth its claim to the payment of the cession monies, and since the private heirs of the Sulu Sultan have, in a suit filed with the High Court of the State of North Borneo, shown that they are the rightful heirs of the Sultan, the State of North Borneo has and will continue to pay the cession monies to the latter.

The alleged desire of the new Sultan of Sulu to reclaim British North Borneo leaves much room for speculation.[49] The High Court of the State of North Borneo has ruled that "the deed of cession was a complete and irrevocable grant of the territories comprised therein..." However, the Philippine Government, as successor in sovereignty of the Sultan of Sulu, would seem to have some right to claim the territory that is now North Borneo. The nature of the provisions of the deed of cession renders the deed questionable in law.

The private heirs of the Sulu Sultan have not shown any concern over the acquisition of North Borneo. It seems to me that some of them are more interested in receiving a lump sum of money, as full payment for the leased territory, as in the case of the Sarawak deal, rather than receiving $5,000 per annum in perpetuity. Whether they have made their intentions known to the North Borneo Government, I am not sure. So far the North Borneo Government has not asked for any alteration of the original Grant.

The Philippines is a nascent republic. It entertains no dream of imperialism. In fact, one of the pillars of its foreign policy is the maintenance of friendly relations with the countries of Asia. However, should she decide to claim for the territory of North Borneo she will not, I think, be violating her foreign policy. She will be asking for what, to the nonlegal mind, is justly hers—a right which she should have asserted long ago.

SANTANINA C. TILLAH *

[49] Incidentally, neither the new sultan nor the late Sultan Jinal Abirin his father, whom he succeeded, were mentioned as heirs of the late Sultan Kiram whether in the Sultan's will or in the court decision.

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THE UNITED NATIONS AND THE STATUS OF WOMEN

Preamble:

. . . "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, *in the equal rights of men and women* and of nations large and small..."

Purposes and Principles:

Article 1, par. 3—To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights, and for fundamental freedoms for all without distinction as to race, *sex,* language, or religion.

Organs:

Article 8—The United Nations shall place *no restrictions on the eligibility of men and women* to participate in any capacity and *under conditions of equality* in its principal and subsidiary organs.

The General Assembly (Functions):

Article 13, par. 1—The General Assembly shall initiate studies and make recommendations for the purpose of . . . b. promoting international cooperation in the economic, social, and cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, *sex,* language, or religion.

International, Economic, and Social Cooperation:

Article 55—With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: b. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, *sex,* language, or religion.

International Trusteeship System:

Article 76, par. C—...To encourage respect for human rights and for fundamental freedoms for all without distinction as to race, *sex,* language, or religion, and to encourage recognition of the interdependence of the peoples of the world.

INTRODUCTORY

The struggle for equality between the sexes dates back to the last decade of the eighteenth century. The first so-called "Declaration of Woman's Rights" was presented in 1789 by the French re-

volutionists, but i .as rejected. It was only around 1848 that organized movement to impr e the general status of women began in several countries. As these movements gathered strength, several national and international organizations and congresses were held in different parts of the world. As a result, women's rights and status in work, education, and civil and political rights gradually improved in many countries. Women first won the right to vote in some states of the United States, then in New Zealand, Australia, Finland, Norway, Denmark, and Iceland. But it was only after the first World War that the definite trend of constitutional reforms resulted in the grant of political rights to women in the United States, Great Britain, USSR, Luxemburg, Poland, Germany, the Netherlands, and other nations.

Years before the United Nations Conference at San Francisco, several international conferences dealt with some specific problems affecting women. In the beginning, they were not directly concerned with the status of women as such, and did not attempt to promote the principle of equality. For instance, in 1902, conventions were adopted at the Hague concerning marriage, divorce, and guardianship of minors; in 1904 and 1910, with suppression of traffic in women and children.

The Covenant of the League of Nations, which went into effect in 1920, represented a definite forward step. The Covenant opened the Secretariat to women, and included articles calling for humane working conditions for all, irrespective of sex or age, and for the suppression of traffic of women.

Throughout its history, the International Labor Organization has often examined the status of women, but, naturally, only in its relation to conditions of labor.

It was in 1923 that the first positive action against discrimination by reason of sex was taken by an inter-governmental body. The Fifth Conference of the American Republic, held in that year in Santiago, Chile, agreed that the program of future conferences should include studies on how constitutional and legal incapacity of women might be abolished. The aim was to insure women full civil and political rights. To achieve this, the Santiago Conference recommended to the American Republics that they provide more opportunities for women, and that they revise their respective civil codes to make it conform with the position that women had actually attained in the life of the community.

Following this, the American Republics set up at their next Conference (Havana, 1928) an Inter-American Commission of Women. This body was to study the status of women in the American Republics and to work for their civil and political rights. As a result of the Convention's studies on the nationality of married women, the American nations, meeting for the seventh Conference in Montevideo in 1933, adopted a convention on this subject. Two years later, the League of Nations recommended this Convention to all member countries for their signature.

Work of the League of Nations:

While women did in fact play a not insignificant part in the League, the Covenant's principle of equality of sexes in the League's work found only limited application. Only eight countries ever sent women as full delegates to the League, though 29 states included women in their delegations in various capacities, primarily as experts and advisers on the Committee for the Protection and Welfare of Children and Young People, the International Commission of Intellectual Cooperation, the Committee of Health, etc. In the secretariat, only three women ever held positions as heads of services or chiefs of sections.

In the documents of the League of Nations, we first encounter a resolution on women in the records for 1931. In that year, the League Assembly, then meeting in its 12th session, expressed the wish that women be allowed to cooperate more fully in its work. It requested the member governments to examine the question of the nationality of women and to submit their observations on this subject to the next assembly.

The entire question of the status of women in all its aspects was not considered by the League until its 16th Assembly (1935) when ten Latin American countries and the Liaison Committee of Women's International Organizations (representing influential non-governmental bodies) requested that the subject be placed on the Assembly's agenda. The Assembly requested member governments to consider and report on the question. At the same time, women's international organizations were requested to continue their study of the whole question of the political and civil status of women. Both governments and organizations were to send information obtained to the Secretary General. Replies were received from 38 states. In addition, valuable documentation was furnished by 8 international women's organizations.

The first report gave data on equality of rights, on the right to elect and be elected to local bodies and national parliaments, on the right to the choice of domicile, to guardianship of children, to work, and to the administration of property, income and earnings. While its research was incomplete, the report had important effects. It revealed widely differing estimates of women's status in society and proved that the desire to grant equality varied greatly from country to country.

On September 30, 1937 the Assembly of the League resolved to publish a general study "giving detailed information on the status of women in various countries of the world as established by national laws and their application". The survey was to be made by "qualified scientific institutes". A small committee of experts was designed by the Council to plan the scope of the survey, organize it, and approve the reports to be published.

The International Institute for Unification of Private Law in Rome took charge of the part concerning private law. The Paris International Institute of Public Law undertook the survey on public law, while the International Office for the Unification Of Penal

Law took care of the part on criminal law. The last two institutes worked in coordination with the Institute of Comparative Law of the Paris Law School.

The committee of experts held three sessions. Its work was interrupted by the war. Only the part dealing with private law was completed.

Work of the United Nations:

The culmination of all these international efforts was the Charter of the United Nations. In 1919, the Covenant of the League of Nations mentioned equality of the sexes only where the League itself was concerned. Twenty six years later, at San Francisco, the authors of the Charter wrote into that document comprehensive statements on equal rights for men and women. The preamble declares that the people of the United Nations are determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. In the declaration of purposes and principles as well as in the provisions on the General Assembly and in the International Trusteeship Council, the equality of sexes is clearly provided for. These guiding principles gave strong impetus to the important work of achieving for women all over the world full equality of status.

While the record of women's achievements includes work in all fields of human endeavor, their contribution to victory in the second World War was probably the greatest single factor that influenced the framers of the Charter. The women themselves who took part in the Conference were responsible, in a large measure, for the document's repeated emphasis on sex equality. They advanced the idea that there should be a body in the new organization to deal with the question of the Status of Women. The first step towards this was taken when the Third Committee approved a proposal put forward by Dr. Bertha Luz of Brazil, recommending that the Economic and Social Council should set up a special commission of women to study conditions and to prepare reports on their political, civil, and economic status and on discrimination with special reference to disabilities placed on them on account of their sex.

Acting on this recommendation, the Economic and Social Council, at its first session in London, established a SubCommission on the Status of Women to advise the Commission on Human Rights on matters relating to the Status of Women.[1] The Council determined the initial composition of the Sub-Committee which was to consist of a nucleus of nine members appointed in their individual capacity for a term of office expiring on March 31, 1947.[2]

The Sub-Commission held a session from April 29 to May 13, 1946. The following program of work was outlined:

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[1] Resolution 1/5 of February 16, 1946.

[2] The following were appointed: Mrs. Rodil Begrurp (Denmark); Miss Minerva Bernardine (Dominican Republic); Miss Angela Jurdak (Lebanon); Rani Amrit (India); Miss Mistral (Chile); Mrs. Vienot (France); Miss Wali-Fang (China) and in addition one national each from Poland and the USSR.

a—Political—universal suffrage, equal rights with men to vote, to be elected and to hold public office.

b—Civil—Equal dignity in marriage (monogamous), and equal rights in (1) guardianship of children, (2) nationality, (3) acquisition, administration, and inheritance of property.

c—Social and economic—Prevention of social and economic discrimination against women; abolition of prostitution; and effective schemes of health and social insurance laws.

d—Education—Equal opportunities, for education including specialized fields; by means of the press, radio, films, ETC., world public opinion on women's rights should be created. A United Nations Women's Conference should be called to further the program.

The Sub-commission outlined several ways of achieving these objectives. First, it called for collaboration with other United Nations bodies, with member governments, national and international women's organization, and experts in various fields at work. Member governments which have not already done so should be requested to grant suffrage to women. World-wide, up-to-date, and reliable surveys of municipal law pertaining to the status of women should be prepared. Records of women's activities should be collected.

It recommended, among other things, that the Economic and Social Council adopt "the suggestions concerning the composition of the full Sub-commission made in the latter's report." [3]

The Economic and Social Council at its second session (May 25 to June 21, 1946) studied the reports of the Subcommission and decided in a resolution,[4] "to confer upon the Subcommission the status of a full commission to be known as the Commission on the Status of Women."

The Commission consists of 15 members. The members represent governments. The Economic and Social Council designates the members of the United Nations who shall be represented on the Commission. However, in order to ensure a well-balanced representation in the various fields dealt with by the Commission, the Secretary-General shall consult the Governments concerned before the latter appoint their representatives, whose appointments shall be confirmed by the Council. The term of office is three years, but for the initial period, one third of the members will serve for two years; the other third for three years; and one third for four years, the term of each member to be determined by lot. Retiring members are eligible for reappointment.

The functions of the Commission were defined by resolution of the Economic and Social Council,[5] to wit: "to prepare recommendations and reports to the Economic and Social Council on promoting women's rights in the political, economic, and educational fields; on urgent problems requiring immediate attention in the field of wo-

[3] The report recommended that there be 15 members to compose the regular Commission.

[4] Resolution 2/11 of June 21, 1946.

[5] Resolution 48 (IV) of March 29, 1947.

men's rights with the object of implementing the principle that men and women shall have equal rights and to develop proposals to give effect to such recommendations."

The Economic and Social Council on October 2, 1946 elected the following fifteen countries as original members of the Commission on the Status of Women: Australia, Byelorussia, China, Costa Rica, Denmark, United States of America, France, Guatemala, India, Mexico, United Kingdom, Syria, Turkey, USSR, and Venezuela.

Achievements of the Commission on Status of Women: First session (February 10-24, 1947)

The first session was largely preparatory in character. Its members began to set forth the principles which would guide future work:

> "Freedom and equality are essential to human development and, whereas woman is as much a human being as a man, she is, therefore, entitled to share them with him.
>
> "Well-being and progress of society depend on the extent to which both men and women are able to develop their full personality, and are cognizant of their responsibilities to themselves and to each other.
>
> "Woman has, then, a definite role to play in the building of a free, healthy, prosperous and moral society; and she can fulfill this obligation only as a free and responsible member.
>
> "Women shall take an active part in the fight for full elimination of the fascist ideology and for international cooperation directed to the establishment of a democratic peace among the peoples of the world, and for the prevention of a new aggression.
>
> "In order to achieve this goal the purpose of the Commission is to raise the status of women, irrespective of their nationality, race, language, or religion, to equality with men in all fields of human enterprise, and to eliminate all discrimination against women in provisions of statutory law, and under maxims and rules of interpretations of customary law."

As to political rights, the Commission called for universal adult suffrage, equal rights to vote, to be elected and to hold office, and for equal participation in government, with opportunity to exercise all the rights and duties of citizenship, irrespective of race, language, or religion.

The Commission defined its aims in civil matters as full equality in all civil rights, irrespective of nationality, race, or religion. In the field of marriage, the Commission sought freedom of choice, dignity of the wife, monogamy, and equal rights to divorce. Women should, it declared, have equal rights to the guardianship of their own and other children, and the right to retain their nationality. Their children should have the right to choose either parent's nationality on reaching majority. As to legal capacity, the Commission declared that women, single or married, should have equal

rights to enter into contracts, and to acquire and dispose of inherited property.

In order to prevent economic and social discrimination against women, the Commission stated that women should be given equal rights with men in regard to labor, wages, holidays, etc. While women should have economic and social equality with men, the Commission believed that in certain circumstances, such as before and after childbirth, they were entitled to special protection. It set down its aims on this matter. State protection of the interests of mother and child should be provided both by giving the mother before and after childbirth, leave with pay, and by arranging leaves of absence during working hours for nursing mothers, without deductions from wages. Special rooms for nursing mothers and a wide network of nursing homes, medical consultation centers, creches, kindergartens, and other facilities should be set up.

The Commission also advocated effective health and social insurance legislation, providing for equal preventive and remedial facilities for men and women, and including special provisions for maternal and child welfare. The evils of prostitution and venereal diseases were studied and it was suggested that the Security Council and the World Health Organization be asked to deal with them.

The educational aims of the Commission were free, full, and compulsory education, equal opportunities in all specialized fields and the right to enjoy scientific discoveries on human growth and development.

To achieve these aims, the Commission proposed that world public opinion be awakened to the need of raising the status of women as one means for promoting both human rights and peace. The Commission stated that, since all Member States had pledged their adherence to the Charter, it expected their full support. And it expressed its desire to aid Member States in their implementation of the equal rights program.

Second session (January 5-19, 1948)

In the interval between the two sessions, the status of women in several countries had considerably improved. Two countries, Venezuela and Argentina, had granted women the right to vote. And in several European and Asiatic countries women had actually voted for the first time. While these developments may be attributable to other factors besides the General Assembly's resolution on political equality and the establishment of the Commission, they were nevertheless steps taken towards the achieving of the United Nations' goal of non-discrimination between the sexes.

A. Political Rights—The Commission adopted a resolution which referred to the need, under the principles of the Charter, for abolishing the political inequality of women still prevailing in many countries and to the General Assembly's resolution concerning the political rights of women [6] and noted that there were still some dis-

[6] Resolution 56(I) of December 11, 1946.

abilities on women as to the use of the franchise and the eligibility to public office. It recommended that the Council instruct the Secretary-General to inquire from governments which had not yet replied to the Questionnaire on the Legal Status and Treatment of Women and which do not grant women full political rights, what their plans were to give effect to the Charter provisions for equal rights for men and women and to urge them to take action; and to request Members which had not already done so to grant women the same political rights given to men. It also recommended that the Secretary-General's report on the electoral rights of women and their eligibility for public office should be brought up-to-date, and presented to the third session of the General Assembly and to succeeding Assembly sessions until women throughout the world had the same political rights that men had.

The question of political rights was discussed at the Economic and Social Council's sixth and seventh sessions where full consideration was given to the report of the Commission. At its 207th plenary meeting the Council adopted the resolution [7] which had been recommended by the Commission on Human Rights.

B. Access to Public Administration Posts—The Commission on the Status of Women adopted a resolution [8] taking note that in certain countries women were not given an equal opportunity with men for positions in the civil service, and that there was discrimination as to professional opportunities and access to diplomatic, consular, and judicial positions and recommended that the Council instruct the Secretary-General to call to the Member's attention the pledges undertaken when signing the Charter with a view to granting women equal opportunities in these fields.

The question was considered by the Commission on Human Rights on the basis of a United States draft resolution which drew the attention of the Members to the advantages arising from an increased participation of women in political life, recommending that consideration be given to appointing qualified women as representatives to international bodies and conferences and that Members grant them equal opportunities at all levels of government activities. The draft resolution, after some amendments, was adopted by the Economic and Social Council at its 207th meeting.[9]

C. Nationality, Domicile, Marriage, and Divorce—Conflicting national laws relating to the nationality of married women, domicile, marriage and divorce received special study. Noting the Commission's resolution on this matter, the Economic and Social Council adopted a resolution [10] requesting the Secretary-General to prepare a report on this subject based on replies to the Questionnaire, a report on existing treaties and conventions in the field of nationality, and a list of questions designed to elicit any further information which, after examination of replies, he might consider to be required

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[7] Resolution 154 (VII) A of August 20, 1948.
[8] Resolution E/615.
[9] Resolution 154 (VII) C.
[10] Resolution 154 (VII) B.

by the terms of the resolution on nationality. The USSR representative objected to this resolution on the ground that the subject with which it dealt fell within the domestic jurisdiction of states.

Much of the Council's debate was concerned with the discriminatory provisions relating to marriage. On this subject Chile introduced a resolution which was opposed by USSR which submitted its own proposal. In the resolution [11] as finally adopted, the Council deplored all municipal legislative measures which forbid mixed marriages and restrict the freedom of choosing a spouse. It also deplored all legislative or administrative provisions which deny to a woman the right to leave her country of origin and reside with her husband in any other country, because without this, the right in the International Declaration of Human Rights on the freedom to choose a spouse cannot fully be realized.

D. Economic and related rights—The Commission affirmed its support of the principle of equal pay for equal work by men and women, and recommended to the Council that all Member Governments encourage the establishment of this principle through all possible measures especially in their own publicly supported civil service. The Economic and Social Council on the basis of the recommendation, adopted a resolution [12] to this effect at its 210th meeting. The Council drew attention to the divergence in various legal systems on the matter of economic rights, some systems restricting the right of married women to act as guardians, to control property and earnings, to undertake independent business ventures, and to engage in various other activities.

E. Educational Opportunities for Women—Approving another proposal of the Commission, the Economic and Social Council requested [13] Member States to grant women, irrespective of nationality, race, or religion, educational rights and opportunities equal to those of men. The Council laid emphasis on educational opportunities for women. The Charter principles of equality should be applied in the educational field in all its branches. It noted that this was not the case in certain countries, especially in technical and professional education. The Council further requested the UNESCO to give special attention to programs for adult education for women. In elaborating on its educational programs, the Council suggested to UNESCO that emphasis should be laid on the principle of equality.

F. Dissemination of Propoganda—The Commission felt that a most important task was to awaken women to their new civic and political responsibilities, to encourage them to participate in the electoral processes, and to remove the prejudice against their participation in public life. In accordance with these aims, the Commission suggested that the Secretary-General (1) call upon the world press, radio, film, and other information agencies to help in removing prejudices against equality between men and women; (2) secure to the fullest extent the collaboration of the Department of Public In-

[11] Resolution 154 (VII) D.
[12] Resolution 154 (VII) G.
[13] Resolution 154 (VII) F.

formation of the United Nations, both in removing these prejudices and in informing the world on all aspects of the Status of Women; (3) prepare suitable information material of all kind for this purpose including a popular pamphlet on the political rights of women. The Council approved these proposals.[14]

Third session (March 21 to April 4, 1949)

For its next session, the Commission met at Beirut on the invitation of the Government of Lebanon. This move was decided upon in the interests of developing wider understanding of its problems and of securing increased support from all regions of the world. During this session, the members took part in a regional conference promoted by official agencies as well as non-governmental organizations in the Near East. This arrangement made it possible for members to become more closely acquainted with many important groups of women, and to understand their opinions on problems within the scope of the Commission.

During the session, the Commission concentrated on practical measures to remove discrimination against women in the political field. It noted with approval that since its second session, the women of Belguim and Chile had achieved full equality of rights to vote and to hold public office. But, the Commission also noted, women in a substantial number of countries still have no political rights at all. It, therefore, requested the Secretary-General to examine the possibilities of a convention on the granting of political rights to women. But even where there is apparent equality in law, discrimination may still prevail in fact. The Commission, therefore requested the Secretary-General to prepare a report on this aspect of the problem for its next session.

Turning to the educational opportunities for women, the Commission studied a report prepared by the Secretary-General on existing disabilities of women. The report was based on replies from Governments the world over. It included information on thirty-seven Member States and fifty colonies and non-self-governing territories. But the information, the Commission felt, covered legal provisions on educational opportunities, not actual conditions. The Commission therefore recommended a second study to be made in collaboration with UNESCO to ascertain not only the existence of discrimination against women in educational opportunities but also the causes of such discriminaton.

Much attention was given to conflicting national legislation and practice relating to nationality, domicile, marriage, and divorce. In some countries, the Commission observed, existing laws make it possible for a woman to become stateless or to acquire dual nationality if she marries or divorces a man of another nationality. In order to eliminate these hardships, the Commission recommended that a convention on the Nationality of Women should be prepared either by a special conference or by some other appropriate body, and submitted, if possible, to the 1950 session of the General Assembly.

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[14] Resolution 154 (VII) E.

The Commission discussed again the question of equal pay for equal work for men and women workers. It had consistently supported this principle. In this connection, the Commission recognized that the International Labor Organization has a special responsibility for the development of conventions. It recommended that the ILO pay particular attention to four special points: 1—the principle of rates based on the job done rather than on sex; 2—access to jobs and promotion procedure; 3—abolition of legal or customary restrictions on the pay of workers; and 4—provision for measures to lighten the tasks arising from a woman's responsibility in the home, including maternity.

Further, the Commission felt that it should be concerned also with the status of women in Trust and Non-Self-Governing Territories.

The Commission requested the Secretary-General to prepare a report on the nature and proposition of posts in the Secretariat occupied by women and also to indicate the extent to which Member Governments have included women in their delegations to the organs and agencies of the United Nations.

With a few changes, these recommendations were accepted by the Economic and Social Council at its ninth session.

Fourth session (May 8-9, 1950)

A. Political Rights of Women—The Commission, having examined the report of the Secretary-General on the discrimination against women in the field of political rights based on constitutional and other legal provisions, expressed the view that the progress of women towards equal political rights with men was encouraging. In particular, they noted that under the Political Constitution of Costa Rica of November 7, 1949, women had been given the same political rights as men and that in Syria women had acquired the right to vote in 1949. Progress was also noted in Greece, where recent legislation had reduced the age at which women could take part in municipal elections and opened the way for women to be elected to municipal office. The part played by the Commission and the Inter-American Commission of Women was recalled.

In considering the Status of Women in Trust and Non-self-Governing Territories, the Commission had before it two reports of the Secretary General dealing with suffrage laws, legal capacity of women in civil law, employment and opportunities to enter and train for government service. The Commission noted with interest the information contained in these reports, and decided to request the Secretary-General to continue to present information of this nature to them at future sessions including it, if possible, in the annual reports on the political rights of women circulated among Member States.

The Commission also examined a report of the Secretary-General on the possibility of proposing a convention on the political rights of women. This convention, the Secretary General pointed out, if adopted, would serve a dual purpose—to enfranchise women

not yet enfranchised, and to prevent the disenfranchisement of women already enfranchised. He also stated that technically no difficulty would be involved in the drawing up of such a convention. There was a divergence of opinion among the members of the Commission as to the desirability and importance of formulating a convention on the political rights of women at this time. On this question, the Commission consulted with a representative of the ILO, who described the experience of that body in the preparation of conventions. It also heard several international women's organizations. In a resolution it requested the Secretary-General to prepare for submission to the next session a draft convention on the granting of equal political rights with men. The United Kingdom representative abstained from voting on the ground that a convention was not an appropriate method of dealing with the problem.

On the political education of women, a resolution was adopted unanimously by the Commission requesting the Economic and Social Council to instruct the Secretary-General to make available the information already collected by the Secretariat in the form of a study guide or pamphlet, which could serve as a guide to organizations working for the political education of women in countries where women have only recently acquired the right to vote or are beginning to participate in public affairs.

B. On the Nationality of Married Women—Because of the complexity of the problem of drafting a convention on the nationality of married women, the Commission decided to restrict itself for the time being to setting forth the general principles which should be used as a basis for a convention and requested the Economic and Social Council to take appropriate measures for the drafting of such a convention.

The first two principles were agreed upon unanimously: that there should be no distinction based on sex as regards nationality in the legislation or in the practices of the parties to a convention; and that neither marriage nor its dissolution should affect the nationality of either husband or wife, but that nothing in the proposed convention should prevent states parties thereto from making provisions for simplified voluntary naturalization of aliens married to their nationals.

The third principle suggesting that in the transmission of nationality to a child, under the doctrine of jus sanguinis there should be no distinction between the father and the mother of the child, gave rise to considerable debate. Most of the members of the Commission felt that it would be inadvisable to include such a principle in a convention on the nationality of married women. It took into account the related work already undertaken by other bodies, particularly the Social Commission, with respect to the position of children. At the suggestion of the Chairman, the Commission decided not to recommend this third principle for inclusion in the convention, but instead to suggest to the Economic and Social Council that it instruct the appropriate bodies of the United Nations to give consideration to the problem of the transmission of nationality to the child from either father or mother on the basis of equality .

B. On the Property Rights of Women—The Commission had before it the questionnaire on the property rights of women, family law and legal status and treatment in general. Certain members expressed the view that detailed questionnaire place a heavy work on the Governments, particularly on federal status and on states whose legal systems are based on common law. The view was also expressed that sufficient information could be obtained without asking such detailed questions and that in the future, the questionnaires should be simplified. A resolution was unanimously passed requesting that replies to the questionnaires be supplied at the earliest possible time but not later than December 31, 1951.

C. On the Participation of Women in the Work of the United Nations—In the course of discussion, it was emphasized that whereas the Secretary-General had taken a liberal attitude on working conditions for women staff members, there appeared to be a disproportionate percentage of women in policy-making and consultative positions. An apparent tendency to place women principally in positions where they dealt with child welfare, health, or other social problems was also noted and it was pointed out that only an insignificant percentage of women had been included in delegations to meetings of United Nations organs and specialized agencies. At the same time, it was made clear that the Commission had no intent of suggesting that posts should be given to other than qualified women, or that the requirements of geographical distribution within the Secretariat, set forth in the Charter, should not be considered.

The Commission heard statements by representatives of the International Alliance of Women and the International Federation of University Women, who suggested that non-governmental organizations should take steps to influence Governments to improve this situation. A resolution was passed suggesting to the Economic and Social Council that it draw the attention of the Member states to the desirability of greater participation of women in delegations; requesting the Secretary-General to examine the reason why women had not yet been able to take up more important positions in the Secretariat, and to report thereon; and inviting the Secretary-General to take the necessary steps to give promotions to qualified women staff members and to appoint more women to higher posts which they are competent to fill in order to secure equality between sexes in the Secretariat and thereby insure more fully the participation of women in all capacities in United Nations organs.

A resolution was passed recommending to the Economic and Social Council that attention be given to the part that women should play in these programs (for example as doctors and nurses, teachers and technical advisers) and as to the eligibility of women in the countries concerned for employment in technical, professional, and administrative positions and as trainees.

E. In the Field of Education—The Commission heard a statement by a representative of the UNESCO in which it was stressed that this special agency was concerned not only with the statistics but also with the socio-economic factors which form obstacles to the access of women to education and with possible remedies to these

obstacles. It also heard statements by the representatives of the ILO, the International Alliance of Women, and the International Federation of University Women, all of whom outlined the activities of their respective organizations in the field of education.

The consensus of opinion was that UNESCO should continue its study of obstacles to women in the field of education; and, if possible should include in its study consideration of measures for the elimination of such obstacles.

At its 76th plenary meeting, the Commission endorsed in principle a proposal of the Australian representative that governments and non-governmental organizations should sponsor exhibits on "Women in the Life of the Nation," in which emphasis should be put on contributions made by women in social welfare, commerce, industry, culture, and art.

F. On the Problem of Greek Mothers Whose Children Have Not Been Repatriated—The representative of Greece gave a detailed account of the tragic situation of Greek mothers whose children had been abducted and not yet repatriated and of the hardships to which they have been subjected. The Members of the Commission individually expressed their deep concern and sympathy and thereupon a resolution was unanimously agreed upon expressing the hope that " the result of the continued activities of the Secretary-General on this matter, in cooperation with the International Red Cross organizations, will be the prompt repatriation of the children, so as to put an end to the agony of the Greek mothers."

G. On the Situation of Women Who Were Subjected to the so-called Scientific Experiments in Nazi Concentration Camps—In considering this item, the Commission had before it a draft resolution proposed by the representative of France calling attention to the plight of women survivors of concentration camps who were subjected to the so-called experiments during the Nazi regime. Many of them are now stateless persons, who cannot count on the legal protection of any Government and are therefore unable to obtain compensation for the sufferings to which they were subjected. The Commission expressed concern for these unfortunate women, and felt that steps should be taken to alleviate their plight.

The representative of Denmark also called the attention of the Commission to the tragic situation of a great number of university women, who are still in displaced persons' camps. A resolution was passed requesting the Economic and Social Council to call the attention of the Social Commission, the World Health Organization, or other appropriate agencies to the plight of these war victims who were compelled to reside by force in Germany during the war, or at least those who may be unable to obtain compensation from any country and to keep the Commission informed of the actions taken in respect thereto.

Work of the Secretariat:

To carry out the programs proposed by the Commission and approved by the Economic and Social Council, the Secretary-General organized a Section on the Status of Women in the Division of Human Rights. This section prepared a detailed and searching questionnaire on the legal status and treatment of women covering both pub-

lic and private law. Its first part, dealing with franchise, eligibility for public office, access to administrative careers, civil liberties, fiscal law and nationality, was sent to Member governments and to women's organizations which have consultative status with the United Nations.

The Section on the Status of Women has investigated the possibility of acting as a clearing center for women's organizations which have been organized throughout the whole world. The primary purpose of such a center would be to assist the education of women voters in countries where they have recently been given the right to vote and to influence public opinion as a means to obtain such rights in those countries in which it has not yet been granted.

In order to enable the Commission on the Status of Women to make definite proposals to the Economic and Social Council, it must be supplied with authoritative information on which to base its recommendations. To this end, records of all aspects of the status of women in Member states and Trust territories have to be prepared and kept up-to-date. The nucleus of these records consists of the replies to questionnaires on the legal status and treatment of women despatched by the Secretary-General to Member Governments. In addition to this official information, material is being obtained from international and inter-governmental women's organizations in all parts of the world. The section keeps in close touch with the work of these organizations and watches all developments which may be of interest to the Commission or affect the status of women.

The prospect:

Such is the still distant but achievable goal of the United Nations to give women the world over the full equality of status, and such the machinery developed to carry out the aims of the Charter in this field. The record only takes note of the first steps, but it illustrates the scope of the work and the manner in which it is being done.

But it should not be forgotten that neither the Commission nor any other body of the United Nations can legislate or enact the principle of equality of the sexes. The United Nations cannot itself change laws or breakdown customs or traditions. In this, as in many other fields, its principal task is one of education. By pointing out the many inequalities that exist even today and by its recommendations to governments, the Commission has opened a way for the development of more advanced and democratic concepts. Its suggestions act as stimuli for the active organized groups in individual countries to work toward achieving world-wide support. The recommendations are the tools with which women themselves can work for equality.

Women have in the Commission and the Section on the Status of Women universal organs through which they can coordinate their efforts to achieve these ideals. As Mme. Marie Helene Lefaucheux (France) said—"It is entirely up to the women to make equality a reality." "What is needed now," said another member, Begum Hamid Ali of India, "is that women take advantage of these opportunities."

PRISCILLA Y. SANTOS

PREJUDICIAL QUESTIONS

On the prosecution of civil actions arising from criminal offenses, the Rules of Court provide that while criminal and civil actions arising from the same offense may be instituted separately, after the criminal action has been commenced the civil action cannot be instituted until final judgment has been rendered in the criminal action. Likewise, after a criminal action has been commenced, no civil action arising from the same offense can be prosecuted; and such civil action shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered.[1]

Obviously, the general rule in this jurisdiction accords priority to the criminal prosecution, such that a civil cause based on the same offense cannot proceed till final judgment in the former. The rule admits of an exception in the case of prejudicial questions.

Article 36 of the new Civil Code declares that prejudicial questions must be decided before any criminal prosecution may be instituted or may proceed. The same article adds that prejudicial questions shall be governed by rules of court which the Supreme Court shall promulgate and which shall not be in conflict with the provisions of the said Civil Code.

Actually, the present Rules of Court are silent on the matter of prejudicial questions; but even without the aforecited provision of the new code, there can be little doubt as to the prevalence of the doctrine in this jurisdiction. Judicial decisions trace the Philippine law on prejudicial questions to the Spanish Code of Civil Procedure of 1882 (Ley de Enjuiciamiento Civil), an ancient, but not entirely negligible piece of legislation. The code of 1882 having been repealed only to the extent of its inconsistency with later enactments, it is still clothed with the character of supplementary law containing respectable doctrine, as there is no other law in this country—aside from Article 36 of the Civil Code above mentioned—on such prejudicial questions.[2]

What is a Prejudicial Question?—The Majority View

The Supreme Court, in the Berbari case, defined a prejudicial question as that which must precede the criminal action, that which requires a decision before a final judgment is rendered on the principal question with which said question is closely connected.[3]

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[1] Section 1, subsections (b) and (c), Rule 107, Rules of Court.

[2] De Leon v. Mabanag, 40 O. G. (8th Supp.) No. 12, p. 38, 41. Berbari v. Concepcion, 40 Phil. 837, 841. Almeida Chan Tanco v. Abaroa, 8 Phil. 178, 179-180, 182. Code of Civil Procedure of 1882:—Articles 111 and 114 in connection with Articles 3-7, Chapter 2, Title I, Bk. I, cited in Rule 95 of the Provincial Law for the observance of the Penal Code and referred to in the last sentence of Sec. 1 of General Orders No. 58.

[3] Barbari v. Concepcion, supra, at 839; also 10 Enciclopedia Juridica Española (6th Ed.) p. 228: "Cuestion prejudicial es la que surge en un pleito o causa cuya resolución sea antecedente lógico de la cuestión objeto del pleito o causa y cuyo conocimiento corresponda a los tribunales de otro orden o jurisdicción."

A perusal of the above definition, in the light of prior and subsequent rulings, reveals the Supreme Court to be of the opinion that for a prejudicial civil or administrative question to exist, it is necessary:

(a) *That there be such a close connection between the question being determined in the civil or administrative proceeding and the principal question in the criminal case, that a final decision on the former is necessary before the latter can be adjudged;* i.e., that a decision on the former is determinative of the guilt or innocence of the accused in the criminal case. The following holdings serve to illustrate this requisite.

In the case of U.S. v. Gemora,[4] the court held that a criminal prosecution for false testimony should not be suspended pending the outcome of the civil case wherein such alleged false testimony was given. Nothing in Article 321 of the Penal Code,[5] which then defined and penalized the offense of giving false testimony in a *civil case,* makes the proceedings or the penalty imposed in such cases in any wise dependent on the outcome of the civil case in the course of which the false testimony was given. However, the court added that where one is charged with giving false testimony in connection with a *criminal case,*[6] the prosecution therefor must be suspended pending final outcome of the principal case; because, by reason of the requirements of the Penal Code, no judgment can be rendered therein until certain facts appear from the judgment in the principal case.

Another leading case on prejudicial questions is Berbari v. Concepcion.[7] A civil action was brought for the recovery of a deposit, the defendant alleging as a defense that he was entitled to compensate the deposit with another amount purportedly embezzled by Berbari. Pending final judgment in the case, a criminal action was instituted against Berbari for the alleged estafa. The court permitted the criminal action to proceed. Two different sums were involved, the deposit sought to be recovered in the civil cause not being the same amount claimed in the criminal case to have been embezzled. It matters not that the same contracting parties were the ones called in the criminal action as the embezzler and the person defrauded, and that the alleged criminal act might have been perpetrated on account of the business and mercantile relations between them, if the civil action cannot decide by anticipation nor be the cause of the prior determination of the existence of the crime. According to the court, even if the civil suit were decided in favor of Berbari and Concepcion sentenced to pay a sum greater than that alleged to have been embezzled by B., there remains a possibility of Berbari being held criminally responsible. On the other hand, before compensation might take place, B.'s conviction is indispensable, it being necessary that the courts declare what was the amount

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[4] 8 Phil. 19.

[5] Now Article 182, Revised Penal Code.

[6] Articles 180 and 181, Revised Penal Code.

[7] Supra, note 2.

embezzled. For this reason, if any action at all must be suspended, it would be the civil and not the criminal.

In Zulueta v. Barcelona,[8] a criminal action for bigamy was preceded by a civil action for annulment of the second marriage. The defense in the criminal case consisted in the contention that such second marriage was contracted in good faith. The court held that the civil action did not involve a prejudicial question, there being no issue therein that may be determinative of the petitioner's innocence in the criminal case. That the second marriage was contracted in good faith is immaterial in the civil action. It is material only in the criminal case to show lack of criminal intent.

In Aleria v. Mendoza,[9] a civil case was filed for unpaid wages due to a number of laborers. There was then a criminal action pending against one of the defendants for protracted delay in the payment of said wages as penalized by C.A. 303. The defendant asked, under Rule 107 of the Rules of Court, for the suspension of the civil action until the termination of the criminal case. The court refused to order the suspension, on the ground that Rule 107 is without application when the civil action does not arise from the offense charged in the criminal case. Here the civil action arose not from the extended delay penalized by law but from the contract of services entered into by the parties. Furthermore, the court noted that the obligation to pay wages is a prejudicial question, for there can be no extended delay in the payment of such obligation unless the obligation be first proved.

The second requirement is:

(b) *That the question be "previous";* it must have been under consideration in a civil action or administrative proceeding at the time of the criminal prosecution. Hence, as stated in the Berbari case, while not all previous questions are prejudicial, all prejudicial questions are necessarily previous.[10]

The implication is that it would be improper for the court to direct the suspension of a criminal action on the ground that a question raised therein is civil and prejudicial, when a civil case involving such issue has not in fact been filed as of that date. The court should not anticipate the bringing of such civil suit.

Reference may be had in this connection to the case of U.S. v. Caballero.[11] The defendant was prosecuted for robbery of a calf. The defense consisted in the allegation that the calf was the defendant's own. In the alternative, it was asserted that the action of the defendant amounted at worst to the act of a co-owner exercising his right of redemption. The court observed in passing that the foregoing considerations indicate this to be in its true aspect a civil question requiring judicial determination before final judgment can be awarded, and which, before any crime was charged,

[8] G. R. L-4029, decided by minute resolution on Aug. 21, 1950.
[9] 46 O. G. No. 11, p. 5443.
[10] Berbari v. Concepcion, supra, at 839.
[11] U.S. v. Caballero, 25 Phil. 356.

should have been fully examined in the proper jurisdiction. However, no civil action had been filed. The Supreme Court did not suspend the criminal prosecution to await the filing of a civil case; instead, it acquitted the defendant in the criminal case, such acquittal however being without prejudice to any civil action as may lie in behalf of either party.

The term "previous", employed by the court in the above citation from the Berbari case, is deceptive. The word offhand suggests a requirement that the prejudicial question be raised in the civil action before the corresponding criminal action is instituted. However, this is not necessary. Attention is called to the case of Aleria v. Mendoza cited previously, where the criminal case actually antedated the civil. It is believed sufficient that the prejudicial question be raised in the civil case before the criminal action is sought to be interrupted by reason of the existence of the said prejudicial question.

The Dissenting View

In the case of De Leon v. Mabanag,[12] the City Fiscal of Manila was enjoined from continuing with a preliminary investigation for falsification of a public document against the petitioner, it appearing that there was a civil case pending appeal before the Supreme Court involving principally the genuineness of the same document.

Chief Justice Moran, however, dissented and observed that a civil question can be of prejudicial character only if it is based on a fact distinct and separate from the crime, yet so intimately connected with the latter that it determines the guilt or innocence of the accused.[13] Justice Moran would therefore require an additional element for a prejudicial question: That it be based on a fact essentially civil in nature, distinct and separate from the crime itself.[14]

In support of this distinction, the dissent cites the reason for the doctrine on prejudicial questions. The doctrine allegedly finds justification in that, in connection with a criminal prosecution, certain matters may arise which are essentially civil in nature and which therefore would be more appropriately determined in a pending civil proceeding.[15] For example, a civil action involving the

[12] Supra, note 2.

[13] Ibid, at 43-44, 47 (dissenting opinion)

[14] See Reus, Ley de Enjuiciamiento Criminal, Tomo I, p. 9: "Si para que exista relación de intimidad es necesario que las cuestiones prejudiciales aparezcan de tal manera unidas a los hechos punibles que sea imposible racionalmente su separación, es por lo contrario indispensable, para que se establezca la relación de causa determinante, que sean distintos y estén completamente separados éstos de aquélla. De tal modo que no se conciben relaciónes de esta clase sin que la cuestión prejudicial resulte de hechos anteriores al delito imputado y sin que la apreciación de estos hechos dependa de circunstancias completamente ajenas e independientes al delito mismo."

[15] De Leon v. Mabanag, supra, at 44 (dissenting opinion); Also 10 Enciclopedia Juridica Española (6:h Ed.) pp. 230-231: "Se echa pronto de ver que tratandose de cuestiones prejudiciales civiles o administrativas determinantes de la culpabilidad o inocencia, la competencia para entender en ellas debe ceder en favor de los tribunales encargados de la justicia civil o contencioso-administrativa, porque las formas de procedimiento que deben aplicar son las más á propósito para el enjuiciamiento de tales

nullity of a second marriage is of prejudicial character and should be resolved before a criminal case for bigamy.[16] Likewise, a civil action involving title to property should first be decided before a criminal action for damages to said property. In such cases, the issue (i.e., of validity or nullity of the marriage or the ownership of the property) is one *of purely civil character,* although connected in such manner to the crime which gives rise to the criminal case that it is determinative of the guilt or innocence of the accused.[17]

But when the question arising in the prior civil case involves the same criminal fact subject of the criminal case, the dissent avers that there can be no prejudicial question. To hold otherwise would be to lose sight of the reason for the law on prejudicial questions formerly alluded to, since the dispute in this instance would be of criminal character and better determined in a criminal proceeding. In reality, there is no civil question, because although the criminal act is alleged in a civil case, it does not thereby cease to be a criminal question. It is then nothing more than a criminal question raised in a civil cause. In such case, the general rule expressed in Rule 107 of the Rules of Court should be applied and the civil, not the criminal action, suspended;[18] unless, as Manresa opines, judgment in the civil case can be founded on other grounds, in which event neither proceeding need be interrupted.[19]

For instance, adopting Justice Moran's theory in connection with the facts of the De Leon case, the court should have permitted the criminal case for falsification of public documents to proceed, notwithstanding the pendency of a civil case, because the latter involved the same alleged crime and the judgment in the said civil case depended upon the determination of the same issue of falsification. The matter of falsification, being essentially criminal, should more suitably be considered in the criminal action. If any of the proceedings were to be suspended, it would be the civil and not the criminal.

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cuestiones y permiten una amplitud de contradicción y de pruebas que no tiene el procedimiento penal establecido para un fin más concreto como es la comprobación de un delito y la averiquación del delincuente."

[16] Distinguish from Zulueta v. Barcelona et al., supra.

[17] De Leon v. Mabanag, supra, at 44 (dissenting opinion).

[18] Ibid, at 48 (dissenting opinion); Also 10 Enciclopedia Juridica Española, p. 228: "En la materia de las cuestiones prejudiciales es un principio general de derecho procesal que el juez de lo civil es absolutamente incompetente en materia penal; de modo que cuando en pleito civil o contencioso-administrativo surja como antecedente lógico del fallo la cuestión de la existencia de un delito, debe el juez suspender el procedimiento hasta que por los tribunales de la jurisdicción criminal se haya resuelto sobre esta cuestión, que es prejudicial del pleito civil o contencioso administrativo."

[19] Manresa, Ley de Enjuiciamiento Civil, Tomo 2, p. 121: Nótese que sólo puede aplicarse al caso en que la sentencia del pleito haya de fundarse exclusivamente en el supuesto de la existencia de un delito, de suerte que aun cuando éste exista y haya de formarse causa de oficio, si puede fundarse la sentencia en otras razones, no debe suspenderse el fallo."